

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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Cooper

FILE: B-218535.3; B-220615.3 **DATE:** January 6, 1986

MATTER OF: Dresser Industries, Inc.; Analytics
Communications Systems, Inc.

DIGEST:

Where two protesters independently assert that GAO notice acknowledging the filing of a protest was ambiguous and did not place them on notice of need to file comments on report within 7 working days after receipt of the report at GAO or to notify GAO that the report was not received on the due date (the date GAO assumes receipt by the protester), GAO will give protesters the benefit of the doubt and reopen the protests for consideration on the merits.

Dresser Industries, Inc. and Analytics Communications Systems, Inc., request that we reopen the files on their protests under request for proposals No. DAAE07-83-R-H291, issued by the U.S. Army Tank-Automotive Command and, invitation for bids No. EMV-85-B-0032, issued by the Federal Emergency Management Agency, respectively. We dismissed the protests because we did not receive the protesters' comments, responding to the contracting agency reports, within 7 working days after we received the reports. We now reinstate the protests for consideration on the merits.

In both cases, after we dismissed the protests, we received comments on the reports from the protesters. In both cases, the protesters indicated that they had received their copies of the relevant reports on dates after we had received ours, and that the comments were being filed within 7 working days of those dates.

Our regulations require that comments on the agency report be filed with our Office "within 7 days after receipt of the report." 4 C.F.R. § 21.3(e). Our standard

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acknowledgment, sent to counsel for the protesters upon receipt of the protests in our Office, in each case indicated the due date for the contracting agency's report and stated that the protester should receive a copy of the report by that date. The notice further informed each protester that it should promptly notify our Office if it did not receive the report:

"We will assume that you receive your copy when we receive ours. Under 4 C.F.R. § 21.3(e), you are required within 7 working days of receipt of the report to submit written comments or to advise our Office that you wish to have the protest decided on the existing record. Unless we hear from you by the seventh working day, we will close our file."

The protesters argue strenuously that this language is at best ambiguous and in fact did not put them on notice of the need to inform us that they received the agency report later than we did or that we would dismiss the protest if they failed to do so. The protesters interpret the notice as stating only that we would dismiss the protest if we did not receive comments within 7 days of the protester's receipt of the report. Only this interpretation, the protesters further say, is consistent with our regulatory provision at 4 C.F.R. § 21.3(e) providing for dismissal for failure to file comments within 7 days of report receipt.

The notice is intended to reflect the requirements of our Bid Protest Regulations, which require contracting agencies to furnish a report to us and to furnish a copy of their report "simultaneously" to the protester and other interested parties. See 4 C.F.R. § 21.3(c). Accordingly, we think a reasonable reading of the notice language should have placed the protesters on notice that, unless we are timely advised to the contrary, we assume that protesters receive a copy of the report on the date we receive it and that we view the 7-day period for filing comments to run from that date. Nonetheless, in light of the protesters'

statements, filed independently of each other, that they in fact were not placed on notice by our acknowledgment form as to how we apply 4 C.F.R. § 21.3(e), we believe it appropriate in these circumstances to resolve any doubt in favor of the protesters and to reopen the files. We shall, in due course, therefore issue a decision on the merits of each protest. We are also modifying the language of our acknowledgment notice so as to avoid this problem in the future.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel